**CHAPTER 26**

1.  The main custodial sentence for a young offender is a detention and training order. The maximum term is 24 months. It cannot be imposed on an offender under the age of 12. In relation to an offender under the age of 15, they have to be a persistent offender (see definition in Chapter 24). The custody threshold test must be met.

2.  In the first instance, it largely depends on how serious the youth court views this offence. Unless the youth court takes the view that the offence is so serious that only a custodial sentence can be imposed, the conditions for a compulsory referral order are met (Tracey is a first time offender and has pleaded guilty). Given the serious nature of the offence, such a referral order is likely to be in the region of 12 months. If the youth court is considering a custodial sentence, it must obtain a pre-sentence report. A youth court can only impose a DTO on Tracey if the custody threshold test is met. Really, in the scenario described, the youth court is faced with a straight choice between a referral order and custody.

If Tracey had been found guilty following a trial, then neither the conditions for a compulsory referral order nor for a discretionary referral order would be met. Depending on the content of the pre-sentence report, the youth court might consider a reparation order. If satisfied that the offence is serious enough (which an offence of arson would be), it could impose a youth rehabilitation order (YRO) with requirements. A detention and training order (DTO) can only be imposed if the custody threshold test is met, and the youth court concludes that a YRO with either an intensive supervision or surveillance (ISS) requirement or fostering requirement cannot be justified.

If Tracey pleaded guilty but had several previous convictions then, taking into account the fact that Tracey has failed to respond to previous orders, the youth court might conclude that the offence crosses the custody threshold in this instance. If it does and the youth court concludes that a YRO with an ISS or fostering requirement cannot be justified, a DTO can be imposed. Much will depend on Tracey’s maturity and the risk assessment undertaken in preparation of the pre-sentence report. As Tracey is 15, the youth court would not need to consider whether she was a persistent offender for this purpose. The minimum length of a DTO is four months. Tracey will serve half her sentence in custody and the remaining half under supervision in the community. It is possible that the ‘dangerous’ sentencing provisions could be invoked in this scenario. Arson is a specified offence. Again, the content of the pre-sentence report and the risk assessment undertaken in this regard will be influential. The youth court would have the power to commit Tracey for sentence to the Crown Court under the dangerousness provisions (s. 16 2020). if it concluded that the statutory test for dangerousness was met. This seems unlikely on the facts. A discretionary referral order would be a possibility, but the seriousness of the offence may prevent this.

Unless the youth court imposes a referral order on Tracey, it must bind over Tracey’s parents or guardian unless it is not in the interests of justice to do so. It is unlikely that the court will consider an award of compensation given the social problems Tracey and her family face and having regard to the sums involved.

3.  A young person would need to appeal to the Crown Court. The appeal would be conducted in the same way as for an adult.